IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3118 of 2005 (O&M)

Date of Decision: 21.11.2006

Chamela Ram ...Appellant

Vs.

Shayam Singh & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.V.B.Aggarwal, Advocate,
for the appellant.

Vinod K.Sharma, J. (Oral)

Delay of 9 days in refiling the appeal is condoned.

Present appeal arises out of the judgment and decree passed by the learned Additional District Judge, Kurukshetra affirming that of the Trial Court vide which suit filed by the plaintiff-appellant for declaration and possession with a consequential relief of permanent injunction was dismissed. The learned lower appellate Court dismissed the appeal filed by the plaintiffs-appellant by observing as under:-

"12 The short controversy in the case is that whether any raasta is comprised in Khasra No.359/2 (0-4), 364/2 (0-4), 387 (0-4), 391/2(0-4), 392/2 (0-4), 393/2 (0-4), 394/2 (0-2) which was provided by the Society to them and whether the lease deed

in favour of contesting respondents is liable to be set aside. After going through the record, it is found that the contentions of the learned counsel for the appellants are wholly misconceived. The appellants have failed to show and prove that any raasta is comprised in khasra Nos. 359/2, 364/2, 387/3, 391/2, 392/2, 393/2 and 394/2, which was provided to them. Merely because two gatha land in each of the khasra number has been specified in the lease deed cannot in any way lead to a conclusive inference that the raasta existed there or that such raasta was provided to the appellant to go to their fields. A bare perusal of the sale deed dated 30.7.1970 executed in favour of the appellants would show that there is no mention of any such raasta therein. The site plan at the back of mutation does not confer any right to the appellants in respect of the same. The case of appellants stands demolished in view of the reply filed by Assistant Registrar i.e. official respondent No.5. The Society has already been proceeded ex parte. It has been pleaded by the official respondent that the society was registered in year 1957 and land was given to the society on lease for 20 years and the society was under winding up on 4.7.71 and Sh. Onkar Singh was Liquidator. It has been further brought out that now the society is not under winding up and Shyam Singh is its secretary. In view of this position, it was upon the appellants to prove that the society was under liquidation when the lease deed was executed and further that Shyam Singh was not its Secretary. However, the appellants

have failed to prove that Society was under liquidation when the lease deed was executed, which could have been shown by calling the records of the society. In case the Society was wound up and is under liquidation or liquidator has been appointed, in that case it was always upon for the appellants to have produced and proved the said record of the society. Similarly, the appellants have failed to prove that Shayam Singh was not competent to execute a sale deed in favour of contesting respondents or that Shayam Singh had no right as Secretary of the Society to execute any lease deed. Rather a careful analysis of the evidence on record would show that Shayam Singh is proved to be Secretary at least up to 1997 as admitted by Bir Singh (PW 2). There is nothing on record to show that Shayam Singh was removed from the post of Secretary after year 1997. Nothing has been produced on record in this regard. The appellants have also failed to prove or produce any record of the Society whereby the land in question is being used or was given as raasta to the appellants. Apart from this, even from the revenue record placed on file, it is clear that the land is being used and cultivated as chahi land and was never used as raasta as contended by the appellants. It is also important to mention here that before the contesting respondents took the land in question on lease, the girdawari of the said land was in the name of respondent- society and thereafter the name of the contesting respondents have been entered as lessee. In these circumstances,it is clear that the said

land was never used as raasta nor it was provided as raasta."

The only contention raised by the learned counsel for the petitioner was that no resolution authorising the Secretary to execute the lease deed was passed and in the absence thereof there was no occasion for the court below to have dismissed the suit. This contention is totally misconceived as the suit of the plaintiff has been dismissed on his failure to prove his claim and also in view of the revenue record produced on record. Learned courts below have rightly observed that in case the appellant was interested in path to his land then the remedy was to approach the Director Consolidation.

Thus there is no merit in the present appeal. The same is dismissed.

(Vinod K.Sharma)
Judge

21.11.2006
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